IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

OP.No. 13346 of 2000(L)

PETITIONER:

KUMARI P.MINI, TEACHER-IN-CHARGE,
ST.JOSEPH'S L.P.S. CHOWARA, CHOWARA P.O.,
(VIA) BALARAMAPURAM, THIRUVANANTHAPURAM.

BY ADV. DR.K.P.KYLASANATHA PILLAY
SRI.B.PRABATH KUMAR

RESPONDENTS:
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1. STATE OF KERALA REP. BY THE SECRETARY TO GOVT.,
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF EDUCATION, TRIVANDRUM,
KILLIPALAM, THIRUVANANTHAPURAM DISTRICT.

4. DISTRICT EDUCATIONAL LOFFICER,
NEYYATTINKARA.

5. ASSISTANT EDUCATIONAL OFFICER, BALARAMAPURAM,
TRIVANDRUMDISTRICT.

6. THE MANGER, ST.JOSEPH'S L.P.SCHOOL,
CHOWARA, THIRUVANANTHAPURAM DISTRICT.

7. P.M.ROSAMMA, L.P.S.A., ST.JOSEPH'S L.P.SCHOOL,
CHOWARA, THIRUVANANTHAPURAM DISTIRCT.

R1 BY GOVT. PLEADER SRI.N.MANOJKUMAR
R6, R7 BY ADV. SRI.K.P.DANDAPANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.21765 & 25271 OF 2000 & 53740 OF 2002
IN OP NO.13346 OF 2000 L

//DISMISSED//

21.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF APPOINTMENT ORDER DATED 1.6.1999 ISSUED BY MANAGER ST.JOSEPH'S SCHOOL L.P.S. CHOWARA.

EXT.P2: TRUE COPY OF REQUEST DATED 19.7.1999 SUBMITTED BY THE PETITIONER TO THE 6TH RESPONDENT.

EXT.P3: TRUE COPY OF REPRESENTATION DATED 21.7.1999 SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT.

EXT.P4: TRUE COPY OF THE COMMUNICATION REJECTING THE APPOINTMENT VIDE NO.F/2185/99 DATED 5.8.1999 BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT.

EXT.P5: TRUE COPY OF PETITION DATED 20.8.1999 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF HEARING NOTICE DATED 7.10.1999 OF THE 2ND RESPONDENT.

EXT.P7: TRUE COPY OF ORDER NO.F1-67470/99/DPI/K.DIS. DT.12.4.2000 OF THE ADDL. DIRECTOR OF PUBLIC INSTRUCTION, TVM.

EXT.P8: TRUE COPY OF ORDER G.O.RT NO.1564/2000/G.EDN. DT.19.4.2000 OF THE GOVERNMENT.

RESPONDENT'S EXHIBITS:

EXT.R7(a): TRUE COPY OF THE SECONDARY SCHOOL CERTIFICATE AND TEACHERS TRAINING COURSE CERTIFICATE.

EXT.R7(b): DATED 14.7.98 TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION FOR HAVING PASSED THE DEPARTMENTAL TEST (ACCOUNT TEST LOWER)

EXT.R7(c): TRUE COPY OF THE BYE-LAW RELATING TO THE MANAGEMENT OF ST.JOSEPH'S L.P.S., CHOWARA.

EXT.R7(d): TRUE COPY OF THE HANDING OVER OF CHARGE TO THE 7TH RESPONDENT BY THE PETITIONER.

EXT.R7(e): DATED 21.7.1999 TRUE COPY OF THE COMMUNICATION BY THE 6TH RESPONDENT TO THE PETITIONER.

EXT.R7(f): DATED 21.7.1999 TRUE COPY OF THE APPOINTMENT ORDER APPOINTING THE 7TH RESPONDENT AS THE HEADMISTRESS OF THE SCHOOL.

EXT.R7(g): DATED 21.7.1999 TRUE COPY OF THE LETTER ADDRESSED TO THE 5TH RESPONDENT BY THE 6TH RESPONDENT.

EXT.R7(h): TRUE COPY OF THE DECLARATION GIVEN BY THE 6TH RESPONDENT.

EXT.R7(i): TRUE COPY OF THE STATEMENT OF CHANGE OF STAFF.

EXT.R7(j): DATED 21.7.1999 TRUE COPY OF the DECLARATION BY THE 7TH RESPONDENT.

EXT.R7(k): DATED 21.7.1999 TRUE COPY OF THE DECLARATION BY THE 6TH RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.13346 OF 2000

Dated this the 21st day of June, 2007

JUDGMENT

The petitioner, an admitted senior of the 7th respondent, was overlooked by the 6th respondent who chose to appoint the 7th respondent as the Headmistress of a Lower Primary School. The question of approval of such appointment of the 7th respondent was considered by the statutory authorities resulting in Exts.P4 and P7, whereby, the Assistant Educational Officer and the Director of Public Instructions held that it is the petitioner who is eligible to be appointed as the Headmistress in preference to the 7th respondent. In doing so, the DPI considered the contentions of the management and the rival teachers on the question whether the institution is a minority institution. He concluded that it is not.

2. Though that order (Ext.P7) is dated 12.4.2000, the petitioner faced an order dated 19.4.2000 (Ext.P8), whereby, the Government approved the appointment of the 7th respondent as

the Headmistress and directed the DEO to take a decision separately on the question of the minority right, as claimed by the institution. Firstly, this was plainly impermissible because if the minority status of the school is not conceded, the 7th respondent cannot be appointed as the Headmistress in preference to the petitioner. Secondly, without deciding that issue, it was inappropriate for the Government to have relegated such issue for consideration of the DEO, when it was the Government which were duty bound to decide any dispute as to minority status. (See the decision reported in **Evan's U.P.School** v. **State of Kerala** [2002 (1) KLT 849]). That apart, a perusal of Ext.P8 will show that it was issued on the basis of a petition dated 25.9.1999 filed by the Manager, long before Ext.P7 proceedings, but immediately after Ext.P4 decision by the AEO. It is also ex facie Ext.P8 that neither the petitioner nor any other person entitled to be heard was notified of such proceedings and heard in relation to that.

3. For the aforesaid reasons, Ext.P8 cannot stand. The same is accordingly quashed.

4. Following the above, what remains is the requirement to consider the question whether the education institution represented by the 6th respondent is a minority institution entitled to protection of Article 30 of the Constitution of India. In view of the ratio of the decision of this Court in **Evan's U.P.School** (supra), it is for the Government to decide such issue. On such a decision being rendered, the dispute on the rival claims between the petitioner and the 6th respondent could also be finally settled by the Government. For such purpose, the Government shall, following this judgment, conduct a hearing with notice to the institution, the petitioner and the 7th respondent and decide finally on the aforesaid issues. Let that be done within a period of four months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.13346 OF 2000

JUDGMENT

21st JUNE, 2007.

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.13346 OF 2000

Dated this the 25th day of June, 2007

O R D E R

Listed to be spoken to at the request of the counsel for the 6th respondent.

2. Spoke.

3. Learned counsel for the 6th respondent submits that on 20.1.2001, the District Educational Officer found that the school is a minority institution; on 26.6.2001, the Director of Public Instructions granted minority status to the school and on 13.10.2001, the Government found that the school is a minority institution. This statement is recorded, however, noticing that no materials are placed on record as of now. Therefore, if materials are placed regarding the above, the same shall also be taken into consideration, as also the binding decisions of the Apex Court as well as of this Court, while the matter is

considered by the Government following the directions contained in the judgment dated 21.6.2007.

This order shall be appended to the judgment dated 21.6.2007.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.